

**Schaefer, Peter**

**From:** Revious, Karen  
**Sent:** Monday, February 02, 2009 8:01 AM  
**To:** Schaefer, Peter  
**Subject:** FW: modified: military child custody  
**Importance:** High

Peter would you print this out and take it down to Col Moran Please. He is waiting for it.

**From:** kevin phillips [mailto:kevinfororderphillips@gmail.com]  
**Sent:** Saturday, January 31, 2009 9:02 AM  
**To:** woodwardcourt@hotmail.com  
**Cc:** Revious, Karen  
**Subject:** modified: military child custody

I left out one word in the sentence "leave the war to others . . . " I left out "to" and added it in below.

----- Forwarded message -----

**From:** kevin phillips <kevinfororderphillips@gmail.com>  
**Date:** Sat, Jan 31, 2009 at 9:26 AM  
**Subject:** military child custody (tweaked)  
**To:** kprevious@mt.gov  
**Cc:** woodwardcourt@hotmail.com

Sen. Jent,

[I have tweaked the language, putting in a few more personal details of my experience.] I am a JAG officer in the Montana Guard (I am currently mobilized).

I went through a divorce after my return from Afghanistan in 2004. As part of the divorce, there was a custody evaluation, because my ex wanted to move to Dallas and I wanted my daughter to stay in Montana. The custody evaluator was very anti-military, stating to me in a conference with me that it would be best if I resigned my commission as one could not be a good parent and be in the guard/reserves, with all the deployments going on. She advised me that she was telling all the guard and reserve members that she was counseling to get out of drilling status and go into the individual ready reserve. That could be deadly advice, because IRR soldiers are thrown in with a unit that they are unfamiliar (as filler before a deployment). Vietnam showed that the best way to survive combat is to go with a unit that has trained together, and that is why today there are cohort units (and stop-loss). They train together, they deploy together, they come back alive together.

After I had my meeting with the custody evaluator, my attorney deposed the custody evaluator and below is a part of their exchange:

My Attorney: "Another term you used was he volunteered for additional duty in Iraq. If the judge were to learn that it is either an issue of volunteering or getting sent there for a year, was that word 'volunteer' important to you; in other words, that he was willing to sacrifice time with his child as opposed to being ordered to sacrifice time with his child to go to war?"

Custody Evaluator: "There was a third option, and the third option is to be placed in a group, and I'd have to get the initials of it again now, where because of family reasons, if there's someone else in that speciality that can go, that particular person is not deployed at that time."

2/2/2009

My Attorney: "Kind of the leave-the-war-to-others-that-don't have-excuses approach?"

Custody Evaluator: "My concern is this child. I don't want to talk about the fairness of the military or the fairness of this war or any of that stuff. But the reason I know that there is another program is because I have gotten themselves into that, so I'm aware that that's available."

My Attorney: "And I'm not talking about the fairness of the war or the program, but it seems that these words that you use, in this case 'volunteer', have meaning to you, and so I'm trying to give them meaning and see if they're important in your decision as to what this child does in terms of the near term."

Custody Evaluator: "Would it be better for him to volunteer to go for a shorter time than go for a longer time? Yes. Would it be better for him, given child development, to volunteer for a shorter time when the child is younger or go for a longer time when the child is older. In an ideal world, would it be better for him to resign his commission so that he could parent? Possibly. . . . "

A divorce hearing was held and the judge ordered that my daughter would go to Texas. I was angry for the way that I had been treated by the custody evaluator, with her blatant bias. I did some counseling through Military OneSource, and the counselor recommended that I write a letter listing my grievances to the custody evaluator as a way of closure. It took me a long time to write the letter, over a year, and my first draft was four pages of angry words. But after much work, I shortened the letter. I sent it in January 2008 from my JAG Officer Advanced Course at Charlottesville Virginia. My letter was two sentences long. It read:

"Dear [Custody Evaluator]: You have no concept of duty or sacrifice. It is tragic that you are advising soldiers."

Those two sentences will be burned into my brain until the day I die.

Also in my capacity as a JAG officer, I have seen soldiers who were deployed and had their permanent custody arrangements changed while they were deployed. When you are in a combat zone, you need to focus on the task at hand and not be worried/distracted about the thought of having your children taken away from you while you are fighting for your country! We would have to tell the soldiers that there was nothing that could be done, as there was nothing in state law to protect them from having their children taken away from them. I remember one Army Reserve soldier storming out of our office after we told him that it was perfectly legal for the court to permanently change the custody to his ex-wife while he was Iraq (and because of the combat conditions and difficulty getting back to the states, he couldn't be there to fight the motion to change custody; and most Montana Courts will not stay the action until the service member comes off active duty).

My question is why would we as a state ever discriminate against those that fight for this country? There are enough hurdles against those that serve in the guard and reserves in this long and arduous war. Passage of this bill would protect our soldiers in Montana that are parents.

Thanks for supporting this bill.

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Kevin F. Phillips

(I drafted this e-mail on after-duty hours on my personal computer. My views do not necessarily reflect the views of the Montana National Guard, Letterkenny Army Depot or the Department of Defense as a whole.)